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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Arthur M. Peslak, Esq. MANDEL & PESLAK, LLC 80 SCENIC DRIVE SUITE 5 FREEHOLD, NJ 07728				
EXAMINER				
VANATTA, AMY B				
ART UNIT		PAPER NUMBER		
3765				
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12/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/673,984

**Applicant(s)**

BABIAK, ROBERT

**Examiner**

Amy B. Vanatta

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings filed on 9/30/03 are objected to because they include descriptions of the reference numerals which are not appropriate in the figures. The description of the reference numerals should appear in the specification, in the Detailed Description of the Invention, rather than in the drawings. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "3" and "4" (as mentioned on page 3 of the specification).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. It is noted that applicant's response filed on 7/28/04 states that a revised drawing is submitted with the response (see page 1 of response), however no such replacement drawing has been received. The drawing in the application remains that as originally filed.

### ***Specification***

4. The substitute specification filed 7/28/04 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: a proper marked-up copy of the

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substitute specification has not been supplied, since the substitute specification merely shows one deletion (on page 3) and does not indicate the other deletions or the additions. Thus, the marked-up copy does not properly indicate all changes made relative to the original specification. Also, a clean copy has not been provided, as the substitute specification has markings on page 3.

5. The title of the invention, "Bibbellow", is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
6. The use of the trademark "Velcro" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

7. The disclosure filed 9/30/03 is objected to because of the following informalities: The Brief Description of the Drawing should give a brief description of the general figure (i.e. the one figure present by applicant), rather than a brief description of each reference numeral. The descriptions of the reference numerals should appear in the Detailed Description of the Invention.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the recitation in claim 2 of "*a hood and latch closure*" constitutes new matter, since a *hood* and *latch* closure was not disclosed in the application as originally filed. If applicant is intending to claim a Velcro-type closure with this language, than a more precise recitation of the generic structure of Velcro, such as "hook and loop closure" or "hook and pile closure" should be recited.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Siegel (US 2,468,841).

Siegel discloses a cushioned protective torso cover comprising an outer covering including a front 11, a back 12, a periphery, and shoulder coverings (see upward legs of body 10, on each side of the neckline 14, having button holes 19,19b thereon; Fig. 2). See embodiment shown in Fig. 2. The shoulder coverings comprise a closure device, which is disclosed as button-holes and buttons (19,19b; 18a,18b). Such a fastener

forms a "hood and latch" closure to the extent claimed. The front 11 and back 12 are fabricated together by sewing along periphery (see stitching 15 and col. 2, lines 12-14), forming an internal pocket (see Fig. 7) which is filled with a padding material (13) as claimed; col. 2, lines 3-5.

Regarding applicant's 35 U.S.C. 112, sixth paragraph recitation of "means for securing the torso cover around the adult's waist", Siegel discloses waist strap 20 for securing the torso cover around the wearer's waist. The waist strap 20 is a structural equivalent of applicant's means for securing.

Although Siegel does not disclose the use of the padded torso cover when caring for an infant, such a recitation amounts to the intended use of the device and does not further define the claimed structure over that of Siegel.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US 5,898,940) in view of Kimball (US 298,985).

Cameron discloses a cushioned protective torso cover comprising an outer covering including a front 4, a back 6, a periphery 8, and shoulder coverings (22,24). The shoulder coverings (22,24) comprise a closure device 26, which is disclosed as

loop and hook fastener elements sold under the trademark "Velcro" (col. 2, lines 6-11). Such a hook and loop fastener is a "hood and latch" closure as claimed. The front 4 and back 6 are fabricated together by sewing along periphery 8 (col. 1, lines 55-59), forming an internal pocket (cavity 16) which is filled with a padding material (18) as claimed; see col. 1, line 59 through col. 2, line 3.

Cameron does not disclose a means for securing the torso cover around the waist, however Kimball does disclose such a structure. Kimball discloses a bottle supporting bib similar to that of Cameron, and the bib of Kimball includes waist straps D. Kimball discloses that the waist straps D help to support the weight of the bottle so that the entire weight of the bottle will not be suspended from the neck (see page 1, lines 38-42 of Kimball). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bib of Cameron with waist straps in order to distribute weight around the wearer's waist, as taught by Kimball, and since waist straps are conventionally used in the art to maintain a bib in position on the wearer. Regarding applicant's 35 U.S.C. 112, sixth paragraph recitation of "means for securing the torso cover around the adult's waist", the straps D are a structural equivalent of applicant's means for securing.

Although Cameron does not disclose the use of the padded torso cover by an adult when caring for an infant, such a recitation amounts to the intended use of the device and does not further define the claimed structure over that of Cameron.

14. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Purcell (US 1,930,212).

Purcell discloses a cushioned protective torso cover comprising an outer covering including a front 14, a back 15, a periphery (see Fig. 2), and shoulder coverings (shoulder strap 3 and portions 6). The shoulder coverings (portions 6) comprise a closure device 11. Regarding applicant's 35 U.S.C. 112, sixth paragraph recitation of "means for securing the torso cover around the adult's waist", Purcell discloses ties 11 for securing the torso cover around the wearer's waist. Ties are the same structure, functioning in the same manner, which applicant discloses for this "means". The front 14 and back 15 are fabricated together by sewing (see stitching 17) around the periphery, forming an internal pocket which is filled with a padding material (16) as claimed; see page 2, lines 23-25.

Thus, the garment of Purcell has the claimed structured, however the closure device of the shoulder coverings is disclosed as ties 11 rather than a "hood and latch closure". Hood and latch closures and ties are regarded as equivalent fasteners for securing the neck region of a garment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a hood and latch closure rather than ties to fasten the neck region of the garment of Purcell, since such fasteners are regarded as equivalent in the art and the selection of any of these known equivalent fasteners to fasten the neck region of a garment would be within the level of ordinary skill in the art.



Although Purcell does not disclose the use of the garment when caring for an infant, such a recitation amounts to the intended use of the device and does not further define the claimed structure over that of Purcell.

### ***Response to Arguments***

15. Applicant's arguments with respect to claim 2 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 571-272-4995. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy B Vanatta/  
Primary Examiner  
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